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In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 625

COLLEGE HOMES, INC., *Petitioner*

v.

THE UNITED STATES OF AMERICA

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

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BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The judgment of the United States District Court for the Western District of Oklahoma was entered without opinion.[1] The judgment of the United States Court of Appeals for the Tenth Circuit was entered without opinion.

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[1] The findings of fact of the District Court are contained in the judgment (R. 48-56).

JURISDICTION

The judgment of the Court of Appeals was entered on December 3, 1951 (R. 122). The petition for a writ of certiorari was filed on March 1, 1952. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether, in the circumstances of this civil case, the District Court erred in proceeding to trial when petitioner was not represented by counsel.

STATEMENT

This is a civil suit by the United States for recovery of the sums due on three promissory notes executed by petitioner and for the foreclosure of one chattel and three realty mortgages securing the notes. The original payees and mortgagees were insured against loss pursuant to the provisions of Section 608 of the National Housing Act (56 Stat. 301, as amended, 12 U.S.C. 1743) relating to the insurance of mortgage loans. Upon petitioner's default in payment, the notes and mortgages were assigned to the United States and the original payees and mortgagees were reimbursed under their contracts of insurance. (R. 2-14.)

Petitioner admitted execution of the notes and mortgages and default in payment (R. 72). Its sole defense was fraud in the inception of the notes and mortgages (R. 72-73). Petitioner alleged that

various named persons had conspired to induce the Federal Housing Administration to approve an economically unsound housing project (R. 23-48, 59-70). At the trial, however, petitioner's only witness, its president, refused to testify directly with respect to the allegations of fraud and conspiracy (R. 100-111). The district court accordingly entered judgment for the United States, finding that petitioner's president "doesn't know of any fraud in connection with this of any nature whatever" (R. 111). A motion for a new trial, supported by an affidavit of petitioner's president, was denied (R. 70), the court again finding that there was no "fraud or conspiracy or any dishonesty on the part of anyone in the making and closing of this loan" (R. 115).

On appeal, petitioner reiterated its charges of fraud and conspiracy. Its principal contention, however, was that the district court had abridged petitioner's constitutional rights in proceeding to trial when petitioner was not represented by counsel. (R. 71.) With respect to this contention, the record reveals the following:

The complaint was served on petitioner on June 21, 1950 (R. 118). Because of petitioner's difficulties in retaining counsel, six orders were entered at various times extending petitioner's time to answer to November 6, 1950 (R. 118-119, 72). During this interval, retainer fees were paid by

petitioner's president to two law firms, both of which withdrew from the case (R. 58, 118). A pretrial conference was not held until January 29, 1951 (R. 71), and at that time, the trial, which had originally been set for February 20, 1951, was postponed to March 20, 1951, at petitioner's request for further opportunity to procure counsel (R. 71-78).[2] At the pretrial conference, petitioner's president stated that he was then able to raise funds sufficient to "go out and hire a dozen lawyers" but "not the lawyer that I need in this case" (R. 74). At the time of trial, petitioner was still unrepresented by counsel and appeared *pro se* by its president (R. 78, 81). At the outset of the trial, the court asked petitioner's president for an explanation of petitioner's inability to employ counsel, but petitioner's president declined an express answer (R. 92). Although petitioner was not represented by counsel at the trial, it was so represented on motion for a new trial and on appeal (R. 112-116, 122).

The court below affirmed, reciting in its judgment that "it being the considered view of the court that the appeal in this cause is utterly without merit and that no useful purpose would be

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[2] Because of a conflict with another case on the district court's calendar, the trial of this case was advanced one day from its postponed date of March 20 to March 19, 1951. Petitioner acknowledges (Pet. 2) that its president was notified of this change on March 16, 1951, and it made no objection to the one-day advancement at the trial.

served by writing an opinion, it is therefore ordered by the court that the judgment should be and is hereby affirmed without written opinion." (R. 122.)

ARGUMENT

Petitioner's argument here, as in the court below, is that the trial in the district court was constitutionally invalid because petitioner was not represented by counsel. However, petitioner cites no authority, and we are aware of none, for the proposition that judgment cannot validly be entered in a *civil* suit where a party appears *pro se* because he cannot or will not obtain counsel.[3]

Contrary to petitioner's assertions, the trial court afforded petitioner more than ample opportunity to employ counsel. After the complaint was served on petitioner on June 21, 1950 (R. 118), six orders were entered at various times extending petitioner's time to answer to November 6, 1950 (R. 118-119, 72). During this interval, retainer fees were paid by petitioner's president to two law

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[3] The fact that a party may suffer a valid civil judgment against him though he is not represented by counsel is in a sense illustrated by the provisions of 28 U.S.C. 1915 respecting proceedings *in forma pauperis*. Section 1915(d) authorizes a court, in its discretion, to appoint counsel to represent persons unable to employ counsel because of poverty. It applies only to citizens, however, and thus has no application to aliens or to corporations, such as petitioner. Cf. *Quittner* v. *Motion Picture Producers & Distributors of America*, 70 F. 2d 331, 332 (C.A. 2); see *Adkins* v. *DuPont Co.*, 335 U.S. 331, 333, 342.

firms, both of which withdrew from the case for reasons best known to petitioner (R. 58, 118). A pre-trial conference was not held until January 29, 1951 (R. 71), and, at that time, the trial, which had originally been set for February 20, 1951, was postponed to March 20, 1951, at petitioner's request for further opportunity to procure counsel (R. 71-78). At the pre-trial conference, petitioner's president stated that he was then able to raise funds sufficient to "go out and hire a dozen lawyers" but "not the lawyer that I need in this case" (R. 74). In short, petitioner's invocation of due process is baseless; there is no remote suggestion of unfairness in the trial court's unwillingness to postpone this lawsuit indefinitely while petitioner allegedly sought legal assistance which was peculiarly unavailable for unexplained reasons.

CONCLUSION

The judgment below is clearly correct; as the court below observed (R. 122), petitioner's "cause is utterly without merit." It is respectfully submitted that the petition for a writ of certiorari should be denied.

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